SUPREME COURT OF THE UNITED STATES.

No. 271.—October Term, 1925.

Turner, Dennis & Lowry Lumber Co., Plaintiff in Error, *vs.* Chicago, Milwaukee & St. Paul Ry. Co.	In Error to the District Court of the United States for the Western District of Missouri.

[May 24, 1926.]

Mr. Justice Brandeis delivered the opinion of the Court.

Turner, Dennis & Lowry Lumber Company brought this action against the Chicago, Milwaukee & St. Paul Railway Company in the federal court for western Missouri to recover $40 alleged to have been illegally exacted in December, 1921. That sum was collected by the carrier, in accordance with a demurrage tariff duly filed, as a so-called penalty at the rate of $10 a day for the detention of a car containing lumber shipped interstate over the defendant's railroad to the plaintiff at Aberdeen, South Dakota, and there held at its request for reconsignment. The claim that the charge was illegally exacted rests upon the contentions that imposition of a penalty exceeds the statutory authority conferred upon the Commission; that if the Interstate Commerce Act be construed as conferring such authority, the provision is void, because Congress is without power to authorize the Commission to impose it, since prescribing a penalty is a legislative function which cannot be delegated; and that, even if authority to impose a penalty was validly conferred, this particular provision is void, because, by imposing the penalty without notice, there is a denial of due process of law; and that, being imposed only on shippers of lumber, there is a denial of equal protection of the laws.

The tariff in question provides:

"To prevent undue detention of equipment under present emergency, the following additional penalties for detention of equipment will apply:

"On cars loaded with lumber held for reconsignment a storage charge of $10 per car will be assessed for each day or fractional

part of a day that a car is held for reconsignment after 48 hours after the hour at which free time begins to run under the demurrage rules.

"These charges will be assessed regardless of whether cars are held on railroad hold tracks or transfer tracks, including consignee's or other private sidings, and will be in addition to any existing demurrage and storage charges."

The general nature of charges under the Uniform Demurrage Code was considered in *Swift & Co.* v. *Hocking Valley Ry. Co.*, 243 U. S. 281, and *Pennsylvania R. R. Co.* v. *Kitanning Iron & Steel Co.*, 253 U. S. 319. The origin and purpose of the penalty charge here in question were discussed in *Edward Hines, etc., Trustees* v. *United States*, 263 U. S. 143. The nature and scope of the reconsignment privilege are stated in *Reconsignment Case*, 47 I. C. C. 590; *Reconsignment Case No. 3*, 53 I. C. C. 455; *Stetson, Cutler & Co.* v. *New York, New Haven & Hartford R. R. Co.*, 91 I. C. C. 3. This penalty charge was attacked as unreasonable and unjustly discriminatory in *American Wholesale Lumber Association* v. *Director General*, 66 I. C. C. 393, and there held by the Interstate Commerce Commission to be neither unreasonable nor otherwise unlawful.[1]

By stipulation in writing a jury was waived; the case was submitted on agreed facts; these were adopted by the court as a special finding of facts; and judgment was entered for the defendant on November 8, 1924, 2 F. (2d) 291. The District Court had jurisdiction under Paragraph Eight of § 24 of the Judicial Code, despite the small amount, because the suit arises under a law regulating commerce. *Louisville & Nashville R. R. Co.* v. *Rice*, 247 U. S. 201. Preliminary resort to the Interstate Commerce Commission was unnecessary, because no administrative question is presented. *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285. The case is here on direct writ of error under

[1]During the period of federal control this tariff was filed with the Interstate Commerce Commission, as provided by law, to be effective October 20, 1919. After the termination of federal control the defendant and other railroads continued to maintain the provision in their published tariffs until March 13, 1922, when it was cancelled in pursuance of the decision and order of the Commission in American Wholesale Lumber Co. v. Director General, 66 I. C. C. 393.

§ 238 of the Judicial Code, prior to its recent amendment, because of the constitutional questions involved.

The efficient use of freight cars is an essential of an adequate transportation system. To secure it, broad powers are conferred upon the Commission. Compare *United States* v. *New River Co.*, 265 U. S. 533; *Avent* v. *United States*, 266 U. S. 127; *United States* v. *P. Koenig Coal Co.*, No. 216, April 12, 1926. One cause of undue detention is lack of promptness in loading at the point of origin or in unloading at the point of destination. Another cause is diversion of the car from its primary use as an instrument of transportation by employing it as a place of storage, either at destination or at reconsignment points, for a long period while seeking a market for the goods stored therein. To permit a shipper so to use freight cars is obviously beyond the ordinary duties of a carrier. The right to assess charges for undue detention existed at common law. Now, they are subject, like other freight charges, to regulation by the Commission. Demurrage charges are thus published as a part of the tariffs filed pursuant to the statutes.

All demurrage charges have a double purpose. One is to secure compensation for the use of the car and of the track which it occupies. The other is to promote car efficiency by providing a deterrent against undue detention. *Pennsylvania R. R. Co.* v. *Kitanning Iron & Steel Co.*, 253 U. S. 319, 323; *Edward Hines, etc., Trustees* v. *United States*, 263 U. S. 143, 145. The charge here in question, although called a penalty, is in essence an additional demurrage charge, increasing at a step rate. Such additional charges increasing with the length of the period of detention were introduced in respect to some cars by the National Car Demurrage Rules. See Rule 7.—Demurrage Charges, sections A and B. They were widely applied while the railroads were under federal control. See General Orders of the Director General Nos. 3, 7 and 7a. Bulletin No. 4, Revised (1919), pp. 146, 151; Supplement to Bulletin, Revised (1920), p. 44. The power to impose such charges, if reasonable, is clear. Those here in question have been found by the Commission to be reasonable. It is not claimed that there was no evidence to support the finding. Compare *Louisiana & Pine Bluff Ry. Co.* v. *United States*, 257 U. S. 114.

The further contentions are that there was a denial of due process of law because the so-called penalty was imposed without

notice; and that there was a denial of equal protection of the laws, because the charge was applicable only to cars loaded with lumber. The demurrage charge is, however, a tariff provision and not a penal law, and thus the tariff duly filed charges the shipper with the requisite notice. And neither the Constitution nor the rule of reason requires that either freight or demurrage charges or the reconsignment privilege shall be the same for all commodities. We find no reason to disturb the basis of the Commission's classification.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.